No. 06-360

IN THE

Supreme Court of the United States

ANTHONY G. VASSEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION TWO

BRIEF IN OPPOSITION FOR RESPONDENT KEENAN & ASSOCIATES

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QUESTION PRESENTED

Whether petitioner has presented compelling reasons to grant this petition where there has been no appropriate showing of any violation of equal protection rights, and the Fourth Appellate District Court of Appeals' decision does not conflict with a decision of this Court or the Court of Appeals and petitioner has failed to demonstrate any federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent KEENAN & ASSOCIATES is a California Corporation, with no parent corporation and no publicly held corporation owning ten percent or more of the corporation's stock.

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INTRODUCTION

Petitioner has presented no "compelling reason" for his Petition for Certiorari to be granted ("Petition"), *See* Supreme Court Rule 10. Specifically, Petitioner has failed to demonstrate that the opinion by the Fourth Appellate District Court of Appeal for the State of California is in conflict with any decision of this Court or the Court of Appeal or that it involves any important federal question that has not be settled by this Court. *See* Supreme Court Rule 10(a)(c)). Petitioner contends that his Fourteenth Amendment Right to Equal Protection under the law has been violated, but the facts and the records do not support any such contention. Petitioner has clearly been provided by the courts with every opportunity to pursue his claim and has made his specific choices to ignore the proper procedures, court orders, and to attempt to force the court system to operate according to his desires, as opposed to operating consistently with the statutes and rules of law. Petitioner was required to comply with rules and orders that would be applicable to any party appearing in the courts of the State of California. Having chosen to bring his case in the courts of the State of California, he must abide by their rules of procedure and obey the lawful orders of the Court.

In its opinion in the first appeal, E017343 and E020125, consolidated with E019009, issued October 4, 2001, the Fourth District Court of Appeal bent over backwards to give Petitioner the opportunity to pursue his violation of 42 U.S.C. § 1983, indicating that Petitioner may be able to state a cause of action under that section alleging conspiracy between the various parties. The court therefore reversed the trial court's judgment of dismissal based upon orders sustaining demurrers without leave to amend, granting summary

judgment and granting a motion to strike. *See* Petitioner's Appendix page 49. Therefore, pursuant to California *Code of Civil Procedure* Section 472(b), Petitioner could file an amended complaint as a matter of right within thirty days after mailing of the notice of remittitur. However, Petitioner did not do so.

Thereafter, Petitioner was repeatedly told by other counsel in their briefs and opposition papers, as well as by the court, that he needed to file a motion to obtain leave to amend his complaint if he wanted to change allegations, or otherwise amend his complaint as to any party. In response to his request at the hearing on a motion for judgment on the pleadings by Grosz & Hartley, he was granted leave to amend only as to those two defendants. (CT 198-A, 294-294, RT 26-38.) He was advised that he needed to file a motion for leave to amend if he wanted to amend the complaint in any other fashion. (RT 34-38) Nevertheless, Petitioner filed his Eighth Amended Complaint alleging new allegations, a new cause of action and amending his allegations against other defendants. (CT 367-407.)

Similarly, Petitioner failed to file his Memorandum of Costs on Appeal within the forty days allowed by California Rule of Court 26(d).

Petitioner would like to control the proceedings of the case according to his own schedule as opposed to complying with the requirements of the court and the state laws and court rules. He cites no authority to support his contention that the trial court proceedings must be stayed while he sought a Petition for Writ of Certiorari to the United States Supreme Court. Similarly, he cites no authority for his contention that all of the proceedings and discovery should be stayed while

he sought a recall of the remittitur. As demonstrated by the Appellate Court's denial of his two requests that the remittitur be recalled, he had no sufficient basis for any such requests. Similarly, his Petition for Writ of Certiorari to the Supreme Court was denied.

Petitioner cites no authority to support his contention that all proceedings and discovery should be stopped because he had some confusion in his mind as to who the parties were to the litigation. He misconstrues and misrepresents the court's order filed July 25, 2002 as an order "reinstating missing defendants" when in actuality, the order was a denial of his request for a recall of the remittitur based upon the fact that it was clear on the record and as a matter of law that there were no missing or "disenfranchised" defendants. As the order pointed out, all of the district defendants had been represented by Dennis Walsh throughout the appellate and post-appellate process. *See* Appendix to Petition, page 120. Again, Petitioner's remedy would have been to file a motion for leave to amend, explaining the situation to the trial court, in order to obtain leave to amend to properly name and identify all of the parties in a new amended complaint. Petitioner did not do so.

Petitioner further contends that he could not file his Memorandum of Costs because of his confusion about the purportedly missing or disenfranchised defendants, which never were missing and never were disenfranchised. However, he cites no authority to support such contentions. There is nothing to have prevented him from filing his Memorandum of Costs on Appeal as to District Defendants or any other defendants.

In summary, Petitioner has failed to demonstrate any basis in law or fact for his Petition for Writ of Certiorari. He has failed to demonstrate any compelling reasons for this Court to grant the Petition and has not demonstrated that rights to equal protection have been violated. Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

Petitioner alleged a conspiracy to violate his civil rights by a large number of people and entities stretching back to the early 1990's. He originally filed his complaint in 1994, and filed his first appeal in 1997 after the trial court sustained demurrers and granted motions for summary judgment and motions to strike.

The Court of Appeal reversed those orders indicating that Appellant might be able to state a cause of action for conspiracy to violate his civil rights. However, Appellant failed to amend his complaint after remittitur, failed to seek leave to amend after the time to amend had lapsed, and following an order granting him limited leave to amend he again failed to seek leave to amend his entire complaint. Instead, he violated the order of the Court and amended, without right, his entire complaint.

After the Trial Court again granted demurrers, motions to strike, and a motion for summary judgment, Vasek elected not to amend, and not to seek leave to amend, and chose to appeal the orders of dismissal and judgment that resulted from his choice.

The Court of Appeal correctly affirmed the dismissals and judgment, as well as the orders taxing Appellant's Costs

on the prior appeal, and the granting of sanctions against Appellant/Petitioner.

The Court of Appeal issued its tentative opinion and indicated that oral argument would not be scheduled unless the parties requested oral argument. Petitioner indicated that he wanted to argue the case while most of the defendants filed waiver of oral argument. KEENAN & ASSOCIATES filed a paper indicating that it wanted time for argument if, and only if, Petitioner argued the matter. After the Court of Appeal scheduled the oral argument, Petitioner requested a continuance as well as requesting additional time for argument. While the continuance was granted, the request for additional time was denied. *See* Petitioner's Appendix, page 38. Thereafter, Petitioner filed a notice that he was waiving oral argument in the matter on March 3, 2006, and the Court Issued its Final Opinion on March 10, 2006. *See* Petitioner's Appendix page 1.

REASONS FOR DENYING THE PETITION

Petitioner failed to demonstrate any violation of the equal protection clause nor any failure to follow any existing opinion in the Supreme Court. Petitioner's reliance on *Felder v. Casey* (1988) 487 U.S. 131 at 147 is misplaced. That case involved the state requirement of filing a notice of claim as a prerequisite to the filing of a 1983 action, which meant that requirement would determine the outcome if filed in state court, but not federal court. Since it created a state condition on the right to sue, it was more than a mere rule of procedure. *Felder, supra*, at page 151. In contrast, where the state rules do not "impose unnecessary burdens upon the rights of recovery authorized by federal laws," then the litigants must

comply with the state rules and the federal court will not intervene. *Felder*, *supra*, page 150.

The California courts have given Petitioner every opportunity to present his claim, but at every step of the way, Petitioner has delayed, violated procedural rules and requirements and chosen not to follow the rules and regulations of the State of California. The rules and regulations of the courts of the State of California apply equally to all parties and are important in keeping order and controlling litigation. While Petitioner may have liked to have stayed all other proceedings while he petitions the U.S. Supreme Court for a Writ of Certiorari, he can cite no authority for such a proposition. There was nothing to preclude him from proceeding with his petition to the United States Supreme Court while proceeding with the actions in the trial court. Petitioner does not appreciate the fact that the defendants have a right to have the matter decided and disposed of in a timely manner. Petitioner does not recognize that defendants have a right to proceed with discovery in a timely manner in an effort to determine whether there is any actual basis for Petitioner's claims. There is no evidence that anyone interfered with his right to petition the United States Supreme Court for a Writ of Certiorari, nor violated his right to do so.

Petitioner's claim that a portion of the Appellate Opinion is missing is without merit. It is apparent that there was no portion of the Appellate Opinion missing, but that there had been a typographical error in identifying subsections. (*See* Petitioner's Appendix, page 169-170.)

Similarly, Petitioner cites no authority for the proposition that his equal protection rights were violated by the

requirement that he file his amended complaint by February 2, 2002. There is nothing to have prevented him from filing an amended complaint, which could later have been amended again, if necessary, by leave of court. This requirement is applied equally to all parties in California. Furthermore, it has nothing to do with placing a condition on the vindication of a federal right violative of the holding in *Felder*, *supra.*

Petitioner again attempted to stall all proceedings in this case, along with refusing to participate in lawful discovery by his insistence that nothing could proceed because he was confused about certain of the District Defendants' participation in this case. However, as the Court of Appeal indicated in its order denying his request for recall of the remittitur, the status of those defendants was clear as a matter of law and was clear on the record. (*See* Petitioner's Appendix, page 120.) All Petitioner had to do was file a motion for leave to amend, with an explanation as to why he needed to amend the complaint to identify all pertinent parties in order to amend his allegations to make one complaint applicable to all parties. However, Petitioner failed and refused to do so.

Petitioner was repeatedly told in papers filed by the other parties, as well as being specifically told by the court that he needed to file a motion for leave to amend if he wanted to amend his complaint as to anyone other than Gross and Hartley. However, Petitioner failed and refused to ever file any motion for leave to amend. Instead, Petitioner deliberately and intentionally, amended his complaint in a manner that changed the allegations against the various defendants without having received leave of court to do so. In doing so, he violated the order of the court which was clear and explicit on its face. Therefore, sanctions were

granted pursuant to California *Code of Civil Procedure* Section 128.5 since Petitioner's actions were frivolous. *See* Appendix page 123. Nevertheless, the court again advised Petitioner that he could amend his complaint. However, the leave that had previously been granted to him was limited to an amendment as to defendants Grosz and Hartley. If Petitioner wanted to amend as to the other defendants, it would be necessary for Petitioner to file a motion for leave to amend. Petitioner chose not to do so. Instead he filed a document indicating his intent to rely upon the eighth amended complaint and his waiver of any right to amend. (CT 2013-2015.) Therefore, Petitioner must be bound by his choices. Thus, the Court of Appeal appropriately determined that he had defeated his own claims through procedural error and had finally reached the end of the road. *See* Petitioner's Appendix, pages 3-4.

Similarly, Petitioner's arguments regarding his failure to file his Memorandum of Costs on Appeal is unsupported by any authority. His argument that he could not allocate costs among defendants is not based on fact or law. Petitioner could easily have filed his Memorandum of Costs on Appeal against all defendants or against all District Defendants, and his unwarranted delay is inexcusable.

In summary, Petitioner does not demonstrate any basis for his request that the Supreme Court review the matter in order to "maintain and underscore the inalienability of rights granted by the United States Constitution to every individual encompassed by it" nor to "ensure conformation to the teachings of the U.S. Supreme Court" nor to "preserve the fundamental notions of ordered government."

CONCLUSION

The Appellate Court was proper in upholding the court's dismissal of the claims against Keenan & Associates based upon Petitioner's waiver of amendment, failure to seek leave to amend, and amendment of the Eighth Amended Complaint without leave of court as to Keenan & Associates. Petitioner's refusal to cure the defects in the Eighth Amended Complaint warranted dismissal under *Solis v. Williams* (1999) 74 Cal.App.4th 577, 585. Similarly, the Appellate Court's affirmance of the Court's Order Taxing or Striking Petitioner's Costs on Appeal was appropriate.

Therefore, Petitioner has not established any compelling reason for this Court to grant his Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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